REMARKS

Favorable reconsideration and allowance of this application are requested.

1. Discussion of Amendments

By way of the amendment instructions above, claims 1 and 5 have been amended so as to correct the typographical errors therein helpfully noted by the Examiner.

In addition, claim 1 has been amended so as to clarify that the process comprising "connecting" the polyamide layer to the layer of another polymer. Support for such terminology can be found in the specification at page 4, lines 17-21. There it is disclosed that "...the polyamide layer and the layer of the other polymer as adjacent functional layers [may be] directly connected to each other or connected by an adhesive layer...."

Thus, following entry of this amendment, claims 1-5 will remain pending herein.

2. Response to Double Patenting Rejection

In response to the obviousness-type "double patenting" rejection based on copending USSN 10/520,704 ("the '704 application"), there is enclosed a Terminal Disclaimer which disclaims that portion of any patent issuing hereon which may extend beyond the expiration date of any patent issuing on the '704 application. Additionally, the Terminal Disclaimer also includes a provision that the patent issued hereon shall be enforceable only for and during such period that legal title thereto is the same as the legal title to the '704 application.

While applicant does not concur with the Examiner's position that the improvement sought to be patented herein is merely a matter of obvious choice or design as compared to the invention claimed in the '704 application, applicants note that, in situations such as this, the issue is not one of "obviousness", but rather one of

"identity of invention." *In re Vogel*, 164 USPQ 619 (CCPA 1970), *In re Kaplan*, 229 USPQ 678 (Fed. Cir. 1986). The Court in *Vogel* set forth the test for identity of invention as whether the claims of one case could be literally infringed without literally infringing the claims of the other. It is quite apparent that one of the claims of one of the '704 application and the present application could be infringed literally without infringing literally the claims of the other. Hence, there is no "identity of invention" so that the Terminal disclaimer enclosed herewith should, in any event, resolve the asserted issue of "double patenting".

3. Response to 35 USC §112 Issues

While applicants do not concur with the Examiner's rationale with respect to the term "joining" – i.e., since such a term itself means "connecting" – claim 1 has nonetheless been amended so as to employ terminology that is commensurate with the originally filed specification. Withdrawal of the rejection advanced under 35 USC §112, second paragraph is therefore in order.

4. Response to 35 USC §102(b) Rejection

The Examiner has persisted in his rejection of claims 1-5 under 35 USC §102(b) as allegedly anticipated by Cordes et al (EP 0000363). Applicant respectfully disagrees.

Specifically, below is a Table 1 in which both examples of Cordes et al are explained in detail in comparison with the example according to the present invention. In the examples according to the present invention, adipic acid and hexamethylene-triamine are indeed used – but *also* benzoic acid is used. The calculations in the Table 1 below therefore make it abundantly clear that the examples of Cordes are outside the pending claims as P is greater than 0.5, namely 0.98. For the present invention P=0.75, and 0.75<1, so the example complies with the formulas as presented.

Table 1: Mathematical Expressions in Cordes et al vs. Present Invention

	Acid(s):	**Amine(s):**	**$1 / [(F_A-1)\cdot(F_B-1)]$**	**$P = [\sum(n_i \cdot f_i)]x / [\sum(n_i \cdot f_i)]y$**
Cordes Ex. 1b:	A=adipic acid n=1; f=2; Mw=146 0.4 parts by weight Thus: $\sum(n_i \cdot f_i^2) / \sum(n_i \cdot f_i) = (2^2)/2=2$	B=NH2-(CH2)6-NH-(CH2)6-NH2 N=1; f=3; Mw-215; 0.4 parts by weight Thus: $\sum(n_i \cdot f_i^2) / \sum(n_i \cdot f_i) = (3^2)/3=3$	$1/[(2-1)\cdot(3-1)]= 0.5$	P=[(0.4/146)x2]/[(0.4/215) x3]=0.98 **Conclusion: P is <u>not</u> less than 0.5 and thus outside claim scope**
Cordes Ex. 2c:	A=adipic acid n=1; f=2; Mw=146 0.4 parts by weight Thus: $\sum(n_i \cdot f_i^2) / \sum(n_i \cdot f_i) = (2^2)/2=2$	B=NH2-(CH2)6-NH-(CH2)6-NH2 N=1; f=3; Mw-215; 0.4 parts by weight Thus: $\sum(n_i \cdot f_i^2) / \sum(n_i \cdot f_i) = (3^2)/3=3$	$1/[(2-1)\cdot(3-1)]= 0.5$	P=[(0.4/146)x2]/[(0.4/215) x3] =0.98 **Conclusion: P is <u>not</u> less than 0.5 and thus outside claim scope**
Invention:	A=adipic acid n=1; f=2; Mw=146 0.4 parts by weight A=benzoic acid N=0.71/122; f=1, Mx=122 0.71 parts by weight Thus: $\sum(n_i \cdot f_i^2) / \sum(n_i \cdot f_i) = \{[(0.42/146)x2^2]+[(0.71/122)x1]\}=1.5$	B=bis-hexamethylene-triamine n-1; f=3; Mw=215; 0.62 parts by weight Thus: $\sum(n_i \cdot f_i^2) / \sum(n_i \cdot f_i) = (3^2)/3=3$	$1/[1.5-1)\cdot(3-1)]=1$	P=[(0.62/215)x3]/[(0.42/146)x2+(0.71/122x1] =0.75 **Conclusion: P is less than 1 and thus within claim scope**

Therefore Cordes et al fails to anticipate the presently claimed invention. Withdrawal of the rejection advanced under 35 USC §102(b) is therefore in order.

5. Response to 35 USC §103(a) Rejection

Claims 1-5 also attracted a rejection under 35 USC §103(a) as allegedly being "obvious", and hence unpatentable, over Nijenhuis et al in view of Van Marcke.

Applicants respectfully disagree with the Examiner and suggest that the pending claims are patentably distinguishable over such cited references.

Nijenhuis et al indeed discloses branched polyamide according to the formulae as expressed in the applicants' pending claim 1. However, it is really at this juncture that any perceived similarities end. Specifically, Nijenhuis does not relate to a multilayer flat film nor to a process of making a multilayer flat film, let alone that branched polyamides allow higher production speeds as evidenced by the present examples (see Examples I-III of the present application on page 7).

A person of ordinary skill in the art, wishing to increase the production speed of making multilayer flat films would therefore have no incentive to employ the branched polyamide as disclosed by Nijenhuis as Nijenhuis is silent about multilayer flat films and their methods of production.

Marcke discloses a laminated sheet of polyamide and polyethylene. However, nowhere is production speed mentioned or suggested, let alone that replacement of the polyamide by *branched* polyamide would allow for higher production speeds. The Examiner's reference to column 4, lines 42-45 to non-linear *polyethylene* is completely unrelated to the present invention as the present invention relates to branched *polyamide*.

It would therefore most certainly not be obvious for an ordinarily skilled person in the art to try to employ a branched polyamide according to Nijenhuis et l so as to increase the production speed in the process for producing a multilayer flat film. Nor would there be a reasonable expectation for success as nowhere is it mentioned in the art of record that a branched polyamide is capable of increasing the production speed. Applicants certainly acknowledges that multilayer flat films comprised of linear polyamide and another polymer are known. Such known multilayer films however do not make it obvious to employ *branched* polyamides according to Nijenhuis et al. To assert otherwise would necessarily require disclosure appearing in the present

applicant's specification and *not* the prior art – a clearly erroneous standard for reviewing patentability under 35 USC §103(a).[1]

Applicants therefore respectfully submit that the invention as defined in the presently pending claims is non-obvious over the prior art of record. Withdrawal of the rejection advanced under 35 USC §103(a) is therefore in order.

6. Fee Authorization

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: /Bryan H. Davidson/
Bryan H. Davidson
Reg. No. 30,251

BHD:dlb
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100

[1] The Federal Circuit regards hindsight as an insidious and powerful phenomenon and is a tempting, but forbidden zone in the inquiry of addressing the statutory obviousness standard. *See, e.g., Panduit Corp. v. Dennison Mfg. Co.,* 227 USPQ 337 (Fed. Cir. 1985) *and Loctite Corp. v. Ultraseal Ltd.,* 228 USPQ 90, 98 (Fed. Cir. 1985).